IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21300 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUSTUFABHAI KADARBHAI KHERADA - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
MR KRUNAL PANDYA A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
MR AM PAREKH for MR AG JOSHI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/08/2007

ORAL JUDGMENT

1. **RULE**. Mr. Krunal Pandya learned A.G.P., waives service of rule on behalf of respondents no. 1 to 3 and learned advocate Mr. A. M. Parekh, who appears on caveat,

waives service of rule on behalf of respondent no. 4. At the request of the learned advocates for the respective parties, the matter is taken up for final hearing today itself.

2. The petitioner has challenged the order of Joint Secretary, Food and Civil Supply and Public Distribution Department, State of Gujarat dated 3rd/6th August, 2007 passed in Appeal No. 124/2005. The record shows that in pursuance of the advertisement issued for allotment of fair price shop for village Meghraj, dated 1st December, 2004, the petitioner as well as respondent no. 4 had applied and after compliance of necessary formalities, respondent no. 2 took the decision and allotted the shop to the petitioner. In taking the decision, respondent no. 2 kept in view the facts that the petitioner was educated unemployed person and he had fulfilled all the necessary criteria for allotment under the Dindayal Grahak Bhandar Scheme. He also took into consideration the fact that respondent no. 4 was studying at Nagpur in Maharashtra and he was to return on 17th April, 2005, after completing his studies. However, respondent no. 2 also took into consideration the fact that the rent note which was produced by respondent no. 4 was fake and forged one since the owner of this premises had filed an affidavit

that no such rent note was executed by him in favour of respondent no. 4. Respondent no. 2, therefore, allotted the shop to the petitioner on the terms and conditions mentioned in the said order, which is dated 23rd August, 2005.

2.1. Against the said order, respondent no. 4 preferred an appeal before respondent no. 1. The petitioner, therefore, made a written request to respondent no. 1 for supplying certain documents, on which the reliance was placed by respondent no. 4. It appears that the copies of these documents were not furnished to the petitioner, though he was permitted to have inspection of the same. Of course, it was specifically requested by the petitioner that he needed these documents to consult his lawyer and take legal advice. The documents have been perused by the petitioner and not by his lawyer. Be that as it may, even before the appellate authority, the rent note which is alleged to have been forged by respondent no. 4 and the affidavit of the owner of these premises were placed before the appellant authority along with the record. However, he has not at all taken into consideration this very important aspect before taking the decision. Mr. Prajapati learned advocate appearing for the petitioner

has submitted that when respondent no. 2 had taken into consideration the relevant documents, and had decided to allot the shop to the petitioner, respondent no. 1 ought to have given careful consideration to this aspect and ought to have taken appropriate decision, keeping in view the allegation regarding forged rent note. As against that Mr. Parekh has tried to support the order of the appellate authority. He has further submitted that respondent no. 1 is even prepared to purchase the premises for accommodating the shop.

3. From the aforesaid discussion, it clearly shows that the appellant authority i.e., respondent no. 1 has not taken into consideration the fact regarding forgery of rent note. Whether the allegation is true or otherwise, is not for this Court to decide. However, today the position is that respondent no. 4 has no premises to run the shop and respondent no. 1 has completely overlooked this fact. In view of the same, the matter is required to be remitted to respondent no. 1 for his fresh consideration, keeping in view all the relevant aspects of the matter. The impugned order of respondent no. 1 dated 3rd/6th August, 2007 passed in Appeal No. 124/2005 is hereby quashed and set aside. The matter is remitted to respondent no. 1 for his reconsideration. He

shall grant personal hearing to the parties after giving due intimation of the date of hearing, at least one week in advance. He shall also supply copies of the documents requested for, to the petitioner. The parties will be at liberty to produce further material to support their respective cases. Respondent no. 1 is also directed to intimate the decision within 15 days thereafter. The exercise to be completed on or before 31st December, 2007.

4. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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